

**Whatever Next? Women's Rights in Sáenz de Heredia's Los derechos de la mujer(1962)**

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‘Whatever next? Women’s Rights in Sáenz de Heredia’s *Los derechos de la mujer* (1962)’

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If we understand law as a paradigm of maleness, then the female lawyer film is a site where cultural attitudes about women, patriarchy and the power of the law converge. The representation of women lawyers in Spanish visual culture is surprisingly frequent.<sup>1</sup> Women lawyers are often either openly feminist or helping the socially disadvantaged, so the character of the female lawyer has some kind of rationale, if we accept for a moment that women lawyers -with their female sense of justice and an ethic of care- tend to support what the world at large usually classifies as “lost causes”.<sup>2</sup> This article examines José Luis Sáenz de Heredia’s film *Los derechos de la mujer* (1962)<sup>3</sup>, which raises questions about empowering women within the legal arena and mediates historical and cultural anxieties that circulated in more general terms after the legal changes of 1958 and 1961.<sup>4</sup> The filmic

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<sup>1</sup> To my knowledge the first female representation is the defence lawyer in Florian Rey’s *La morena clara* in 1936, defending the socially disadvantaged (interestingly, the 1954 remake by Luis Lucía also has a female defence lawyer). In the 1960s Sáenz de Heredia dedicated two films to female lawyers, the above mentioned 1962 film and *Juicio de faltas* (1969). In the 1980s we find female lawyers in Almodóvar’s films in minor and major roles (*Mujeres al borde de un ataque de nervios* (1988) and *Matador* (1983)); more important representations are the female lawyer protagonist in Jorge Grau’s *Coto de caza* (1983), the divorce lawyer in the TV series *Anillos de oro* (1983) and the feminist lawyer in *Turno de oficio* (1986). From the mid-1990s onwards there are defence lawyers in sexual harassment suits like *Subjúdice* (1998) or *Mónica* (2003), the heroine lawyers in *La nave de los locos* (1995) and *La suerte dormida* (2003) as well as female lawyers in TV series such as *La ley y la vida* (2001), *Al filo de la ley* (2005) and *Lex* (2008).

<sup>2</sup> The concept of ‘ethic of care’ was first theorised by Carol Gilligan in her seminal book entitled *In a Different Voice* and refers to a form of moral reasoning that is based on compassion and care rather than rights-based discourses (Cambridge: Harvard University Press, 1993 [1<sup>st</sup> ed. 1982]).

<sup>3</sup> This article focuses on law and cultural history. For excellent articles on a wider and continuing revision of the intellectual legacy of Francoism see Tatjana Gajic, ‘Francoist Legality: On the Crisis of Authority and the Limits of Liberalism in Jesús Fuego and José Ortega y Gasset’ in *The European Legacy*, 13.2 (2008), 161-174. See also Jo Labanyi, ‘Miscegenation, Nation Formation and Cross-Racial Identifications in the Early Francoist Folkloric Musical’, in *Hybridity and Its Discontents: Politics, Science, Culture*, ed. Avtar Brah and Annie F. Coombes. (London: Routledge, 2000).

<sup>4</sup> See *Leyes de 24 de abril de 1958 por la (sic) que se modifican determinados artículos del Código Civil y el título IV de la primera parte del libro III de la Ley de Enjuiciamiento Civil* (Madrid: Reus, 1958). For the

comedy *Los derechos de la mujer* depicts anxieties about women's independence that the legal changes supposedly brought about and exemplifies this through a case study of a successful woman lawyer and her private battle for the right to practise law. This article looks at this early example of female lawyer representations when women were entering a traditionally male sphere and access to the legal profession itself was one of the main issues. It is theoretically informed by Cynthia Lucia's book entitled *Framing Female Lawyers* which examines female lawyers as catalysts of patriarchal crisis and argues that the female lawyer's status as a figure with access to the law most often entails that she herself will be interrogated and put on trial.<sup>5</sup> It also interrogates the ways in which both the codes of law and those of the genre frame the female lawyer as personifications of progress and epithets of powerful career women. Finally, it asks to what degree this early example of female lawyer films constructs the subjectivity of its female protagonist as law constructs its female subjects at the time, namely as *eternas menores* with limited legal capacities.

It seems odd that Sáenz de Heredia, director of films such as *Raza* and *Franco, ese hombre*, would dedicate two films to female lawyers. The director himself was not particularly proud of his work and explained in an interview that he had felt obliged to help his friend Javier Armet, the male lead and producer of the film:

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legal changes in 1961, see *Los derechos políticos, profesionales y de trabajo de la mujer: ley 56/1961 de 22 de julio* (B.O.E. 24/7/61, número 175) (Madrid: Almena, 1961).

<sup>5</sup> Cynthia Lucia, *Framing Female Lawyers: Women on Trial in Film* (Austin: Texas University Press, 2005).

Es una de esas cosas que hay que hacer en un momento dado. Había tenido Alfonso Paso un buen éxito con esa obra de teatro, y vino Javier Armet a contratarme para una película y me dijo que le gustaría que adaptase esta obra. Yo tenía muy buenas relaciones con Alfonso Paso y nos metimos a hacer la película. [...] Era un compromiso un poco obligado por todos los lados, y lo acepté y fue también una decisión mala.<sup>6</sup>

Carlos Aguilar in the *Guía del cine* is equally condemning in his judgment of *Los derechos de la mujer*, albeit for completely different reasons: ‘Una de las apologías más delirantes que de nuestro subdesarrollo cultural e ideológico (bueno, del de la España de los 60) perpetró el cine español, a partir de la tristemente célebre obra teatral homónima, fruto de la progresivamente retrógrada pluma de Alfonso Paso.’<sup>7</sup> Aguilar seems to react to the ideological affiliations of Sáenz de Heredia and Paso, rather than any value of either play or film. Paso’s very successful play was premiered in 1962 with Concha Velasco in the female lead. Velasco was subsequently conspicuous by her absence in the film that otherwise boasted a star cast in the secondary roles (Amelia de la Torre as Fuentes’ mother, Antonio Garisa as the wife-murderer, José Luis López Vázquez as the *pasante*, José Bódalo as an angered husband).<sup>8</sup>

The film opens with title drawings, a female and male voice-over narrating the story of Adam and Eve drawing our awareness to a religious discourse that lingers in the

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<sup>6</sup> Juan Julio de Abajo de Pablo, *Mis charlas con José Luis Sáenz de Heredia* (Valladolid: Quirón, 1996), 142. See also Fernando Vizcaíno Casas and Angel Jordán who state that: ‘Pero lo cierto es que Sáenz de Heredia no conserva recuerdos especialmente buenos de *Los derechos de la mujer*, tal vez por haber tenido que trabajarla en instantes poco propicios personalmente.’ (*De la checa a la meca: una vida de cine* (Barcelona: Planeta, 1988)).

<sup>7</sup> Carlos Aguilar, *Guía del cine* (Madrid: Cátedra, 2007), 330.

<sup>8</sup> See Fernando Mendez-Leite, *Concha Velasco* (Valladolid: Semana de Cine de Valladolid, 1986), 150, where she comments on this anomaly. See also Andrés Arconada, *Concha Velasco: diario de una actriz* (Madrid: T&B Editores, 2001) 96, where Velasco seems to compliment Mara Cruz.

background throughout the film. It then cuts to a church wedding and a conversation between three guests:

Male guest: Entonces, ¿el novio es el famoso abogado José Fuentes?

His wife: No... el famoso abogado es ella, la novia.

Male guest: ¿Ella es don José Fuentes?

Another guest: No... se llama *María* José Fuentes. Mucha gente se confunde como usted.

Male guest: Es claro. Parece extraño que un criminalista que acaba de sacar libre al asesino ese, al Camilo, sea una muchacha tan...tan...

He never finds the adequate words. How can a woman so beautiful be one of Madrid's top lawyers? The scene is set within these first few minutes: religion, law, marriage and female beauty, those are the issues that frame the debate in the filmic comedy *Los derechos de la mujer*. Sáenz de Heredia's film tells the story of a woman lawyer, who, shortly after getting married, is faced with the decision of having to sacrifice her career to dedicate more time to her husband and future children. The decision is not an easy one to make, because she is at the pinnacle of her career: she works for one of the leading law firms in Madrid, she is one of the star defence lawyers in town and has just published a textbook on criminology, a branch of law usually considered to be particularly male. The protagonist thus embodies the singular woman who has gained access to the narrative and the legal system, where women traditionally have played peripheral roles. Sáenz de Heredia's film is reminiscent of George Cukor's 1949 comedy entitled *Adam's Rib*, a battle of the sexes between two lawyers. Concha Velasco in her fictional diary entitled *Concha Velasco: diario de una actriz* compares *Los derechos de la mujer* with Cukor's classic and reminds us that the

contemporary audience would have made similar comparisons.<sup>9</sup> In *Adam's Rib* the narrative revolves around the court case in which the assistant district attorney (Spencer Tracy) is opposed by his wife as the defence counsellor (Katherine Hepburn). In *Adam's Rib* the Hepburn character defends a woman who is accused of attempting to murder her husband and thus gender issues are introduced at the case level as well as the narrative level of the film. The battle of the sexes is played out in both the courtroom and the private sphere: Amanda's (Katherine Hepburn) courtroom performance is inextricably linked to her role as the assistant district attorney's wife. Adam (Spencer Tracy) strongly implies that her position as a New Woman has unsexed her, transforming her into his competitor for power in the public sphere. Equally, in *Los derechos de la mujer*, Juan, although he is not a lawyer himself, perceives his wife as an irritating, and unnecessary, participant in the public sphere. The courtroom scene, however, with Antonio Garisa as the wife-murderer trying to plead insanity, is almost peripheral to the key issue of the film: the decision between marriage and career and María José's stubborn insistence on the latter. It is ironic that the lawyer who so adamantly defends her own rights, and by extension women's rights in general, would defend a man who killed his wife and mother-in-law. Unlike in *Adam's Rib* the gender issues at the case level are ambivalent: Fuentes defends a man who unashamedly admits to having killed two women he is related to, which, as the *fiscal* reminds us, is an aggravating circumstance. He explains in his closing speech that the defendant:

[mató] a su propia esposa [...] que encarnaba las virtudes tradicionales de la mujer española: sumisa y obediente al marido y desentendida de todo lo que no fuera la consagración del hogar.

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<sup>9</sup> Andrés Arconada, *Concha Velasco*, 95.

The above statement about the victim indirectly questions the defence lawyer's dubious morality (she represents a wife-murderer) and also reminds the viewer that she is the exact opposite of the traditional Spanish woman for whom the private sphere is sacred. María José Fuentes is more 'at home' in the public sphere than in her own kitchen. In one of the many comic showdowns between Juan and his lawyer wife he challenges her to tell the servants which three-course meal they are supposed to prepare for lunch. Unsurprisingly, María José stumbles at every hurdle, does not know which starter is appropriate and what the difference is between *canelones al gratén* and *canelones a la Rossini*. Humiliatingly, her male servant enlightens her as a result of which she storms out shouting at her husband: 'No sé hacer un menú y estoy tan contenta de no saberlo. ¡Lo haces tú!' Cynthia Lucia, in her excellent book entitled *Framing Female Lawyers*, argues that one of the staples of the female lawyer film is the lawyer's transgression of having abandoned the private for the public sphere where she finds only doubtful fulfilment.<sup>10</sup> Although Fuentes is a very successful defence lawyer, in this particular case her professionalism is questioned by her own client – marvellously played by Antonio Garisa – who would prefer to represent himself rather than being represented by a female lawyer ('eso es cosa de hombres [...] a casa, a casa, a barrer, a barrer'). Lucia's analysis of American lawyer films also suggests that the lawyer's agency as film protagonist partly rests on her authorial agency, since within the courtroom the lawyer creates a master narrative composed of competing versions

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<sup>10</sup> Lucia, *Framing Female Lawyers*, 22.

of stories told by the defendant and witnesses.<sup>11</sup> María José Fuentes in this particular incident is neither in control of her case nor her client: it is almost as if she has lost her professionalism upon marriage, which is strangely inexplicable since she was introduced to us as a top lawyer from the very beginning. In the courtroom scene this is also communicated through the editing of the film which sidelines her: the very moment the judge in the courtroom says ‘tiene la palabra la defensa’, it cuts to her husband cleaning the house, an important reminder to the viewer that it should not be him but his wife fulfilling her ‘natural’ duties in the household. It could thus be argued that the female lawyer here is framed by both the narrative and the codes of film.

The marital problems begin almost instantaneously, only hours after the wedding María José insists on preparing her court case for the following day. Her husband Juan is getting increasingly irritated:

Juan: Yo creo que en primer lugar debes a tu marido. En la epístola te lo han dicho hace un rato.

María José: Esto se refiere a otras cosas. Está escrito hace muchos siglos. Yo me debo en primer lugar y por encima de todo a mi carrera.

Juan: Te has dado cuenta de que no nos hemos dado ni un beso.

[...]

María José: He hecho un bachillerato y una carrera. Me he ganado a pulso un puesto profesional de primera categoría. Tengo pleno derecho de ejercer.

Juan: Y yo de hacer vainica.

María José: Pero eso no es normal.

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<sup>11</sup> Lucia, *Framing Female Lawyers*, 103



Juan: Y a ti te parece normal que una mujer con estas piernas defienda a un asesino.

María José: Yo soy sólo eso, ¿no? Mis piernas, mis ojos... la hembra, vamos.

Lucia argues that female lawyers either neurotically suppress their sexuality or aggressively act upon it and María José Fuentes is certainly an example of the former.<sup>12</sup> She suppresses her sexuality (and femininity for that matter) in an attempt to assimilate to the masculine world of law and conform to male standards in the execution of her profession, as one would expect from this early example of female lawyer films. What drives her insistence not to give up the law is the fact that her education cost her so much that she does not want to let go of her success and professional standing after making huge sacrifices. This desire to be a lawyer is wrapped up in a rights discourse ('Tengo pleno derecho de ejercer.') to oppose her husband's arguments of religious obedience and a bizarre form of biological essentialism wrapped up in indirect compliments about her beauty ('una mujer con estas piernas'). The battles, then, are fought in the name of gender and in the name of law. In the crucial moments of the marital fights both María José and her husband Juan take recourse to the letter of the law. Looking at the film as a whole, however, both spouses also use sly tactics. María José, for example, hires a prostitute to seduce her husband, so that she can catch him *in flagranti delicto* and demand a separation. While setting up the trap in her marital home, she talks to the prostitute who congratulates her on her beautiful legs:

María José: Mis piernas me dan igual. Sólo me importa mi inteligencia.

Prostitute: Pero eso lo tiene todo el mundo. ¡Las piernas no!

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<sup>12</sup> Lucia, *Framing Female Lawyers*, 23

While both women consider different attributes important for their respective professions, it is also a cue to remind us that the female lawyer, despite her supposed narrative agency, is still an objectified woman. Equally, Juan's adoption of a role reversal (he pretends to give up his job, cleans the house, cooks lunch) is not done out of a belief in equality, but is a sly tactic to make his wife see the absurdity of her ambitions. The editing draws our awareness to Juan's role: every scene dealing with María José's cases (both in the courtroom and in her office) cuts to a scene in the living room or kitchen in which Juan is the house-husband, 'the other', albeit in a self-constructed form, and one can, at times, be forgiven for falling for the film's supposed ethics of otherness, and almost feel sorry for him. A conversation with his father-in-law is equally revealing:

Suegro: Todos somos hombres hasta que un día de pronto dejamos de serlo... Yo un día pedí una camisa en casa. El botón del cuello estaba colgando por un solo hilo. Cuando pedí que se arreglara, me leyeron los artículos 198 y 199 del *Código* sobre los derechos de la mujer. Lee eso y si al terminar te sientes hombre, me lo dices.

Juan: ¿Pero de que tratan esos artículos?

Suegro: De muchas cosas. Por ejemplo, tú no eres atendido por tu esposa y te vas a un hotel. Pues la mitad de lo que ganas es para ella.

Juan: Esos serán sus derechos. Pero también tendrán sus obligaciones.

Suegro: ¡No!

Juan: ¿Cómo que no? De modo que cuando la mujer no cumple, ¿no hay nada dispuesto?

Suegro: Nada. Lee el código que está allí abajo.

Juan: Está mal, ¿no?

Suegro: Es la ley.

Juan: Pero puede estar mal, ¿no?

Suegro: Te insisto que es la ley.

Juan: Pues con ley o sin ella, yo no estoy dispuesto a que esto siga así. Y no seguiré.

Suegro: ¿Qué vas a hacer?

Juan: Ser hombre y no dejar de serlo. Si ella tiene derecho de ser abogado, yo tengo la obligación de ser hombre y no voy a dejar de serlo. Antes deja ella su carrera.

Suegro: ¿María José? No digas tonterías. [...] No sabes todavía con quién te has casado.

Juan constructs the argument around legal notions of rights and duties maintaining that he has an obligation to his own manhood and by extension to manhood in general. Looking up the above-mentioned articles in the *Código Civil* we will find that neither article is remotely related to women's rights nor is there any other article in the *Código Civil* that gives women *equal* rights (in the post-1978 acceptance of the term).<sup>13</sup> The victimisation of father and son-in-law are therefore figments of the scriptwriter's imagination. Sáenz de Heredia's film is based on a play by Alfonso Paso, a prolific playwright of the Franco era. Paso, in his introduction to the play, explains that:

*Los derechos de la mujer* es el retrato burlesco, a veces en tiempo de farsa, a veces en tiempo de comedia, de la feroz lucha por el mando entablada entre un hombre y una mujer, que se quieren. [...] Secundariamente, mi obra pretende satirizar la manía tan española de resolverlo todo 'por la tremenda', de molestar a los abogados para cualquier nimiedad. Pretende tomar a broma ese afán español de entrar en todas partes con el artículo tal o apartado cual a las espaldas, sin recurrir antes a la buena disposición, a la comprensión, al sentido común y, en fin, a la alegría de vivir en paz. De nuestro carácter no tienen culpa los abogados y para esa profesión tengo mi

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<sup>13</sup> The *Código Civil* in force at the time was the 1889 Code. For an excellent edition with commentary, see *El Código Civil de 1889, interpretado por el Tribunal Supremo por Enrique Díaz Guijarro y Antonio Martínez Ruiz*, (Bilbao: Andrés P. Cardenal, 1900-1924), 22 volumes.

más alta estima y mi mayor respeto. Espero que así lo comprendan. Yo escribí esta comedia de muy buen humor. Quisiera que con el mismo buen humor fuese tomada.<sup>14</sup>

At a surface level there is an obvious critique of the human, rather than the legal, obsession to construct the world around binary oppositions of right and wrong and the recourse to law to sort out life once relationships have irretrievably broken down. However, Paso might be wrong when he states that his social criticism is not aimed at lawyers. It might not be aimed at law, but is it really a coincidence that Paso's play and Sáenz de Heredia's anti-feminist film which caricatures professional women chooses a lawyer as the female lead? Might the woman lawyer not serve as a shorthand reference and epitome of a powerful career woman? *Los derechos de la mujer* convincingly illustrates how the female lawyer as a figure with access to the law, and hence the public sphere, is not given enough authority or agency in filmic narratives which, although they record patriarchal crises, are ultimately dedicated to patriarchal restoration.

The lack of accuracy in the representation of legal issues is a common feature in cultural texts and often done in order not to burden the reader/viewer with unnecessarily legalistic details which would add little to the realism of the representation. However, in this particular case it is clearly done to score anti-feminist points. *Los derechos de la mujer* can thus be read as a cautionary tale to alert its viewers to what might happen if and when women are given more rights. The complaints of María José's father are two-fold: firstly, that his wife and daughter do not attend to traditional household duties, which is interpreted as a direct attack on his manhood; secondly and more importantly, that the *bienes*

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<sup>14</sup> Alfonso Paso, *Los derechos de la mujer* (Madrid: Alfil), 5-6.

*gananciales* have to be shared with one's wife in case of a separation. The latter, referring to legal changes in 1958, is alluded to in key scenes of the film and attests to the existence of male anxieties about women's rights. This is nowhere more obvious than in the brilliant dialogue between María José and the husband (José Bódalo) of one of her clients who have come to see her to discuss a *desavenencia conyugal*. María José's simple explanation of the legal term *cónyuge* (and with that the faint implication that men and women are equal in marriage) brings on an immediate outburst of insecurity from the husband:

María José: Ante la ley en este caso, usted no es un hombre, es uno de los cónyuges, que es indiferente que sea varón o no. Es uno de los cónyuges simplemente.

Husband: ¿Entonces yo no soy un hombre? [...] (*to his wife*) Pues sabes lo que te digo, esto tiene un arreglo muy fácil. Irme de casa y en paz.

María José: No se lo aconsejo. Si a su esposa la defiende un buen abogado, tendrá que darle el 50% de lo que gane y de lo que ha ganado.

Husband: Pero si ella no ha ganado nada. Pero si su padre al morir sólo se le ha dejado una pianola.

María José: Pues la pianola es un bien ganancial.

Husband: La pianola es una tabarra, señora. Pues eso no es justo, no es justo. [...] Pues para mantener la casa tengo que sentirme hombre y no cónyuge. Si salgo a la calle como cónyuge, no gano dinerito.

To reaffirm the message of anxiety the Bódalo character and Juan join in a brotherhood of maltreated husbands:

Juan: Lleva usted cara de maltratado.

Husband: Debo llevar cara de cónyuge.

Juan: No se amilane. Aquí tiene mi tarjeta. Si me llama, puedo serle útil. Debemos ‘desconyugizarnos’.

Again the anxieties are not based on legal reality of the time. By no stretch of the imagination were the *cónyuges* equal in marriage. Throughout the dialogue the cross-cutting alerts us to the fact that this *desavenencia conyugal* foreshadows Fuentes’ own marriage problems, although she has just got married the same day and is still in her wedding dress. It cross-cuts to two scenes: the above mentioned conversation between father and son-in-law in which the father laments his dwindling manhood, and Juan and María José’s marital fights which foreshadow their own problems.

Lucia argues that making movies about women lawyers and the law is curiously productive for exploring patriarchy in crisis. She traces a cultural motivation that prompts filmmakers to create stories about powerful women that simultaneously question and undermine women’s rights to exercise authority.<sup>15</sup> This certainly holds true for María José Fuentes, but what is more, this film is also particularly interesting since it intertwines the representation of a prototype female lawyer with the depiction of male anxieties regarding legal changes. Yet why would a film like *Los derechos de la mujer* be made by one of the film directors of the Franco period when patriarchy was not even in crisis yet? A look at the historical and legal context answers that question quite succinctly. Firstly, it should be noted in this context that after the Civil War the Franco regime repealed the legal advances of the Second Republic to keep women out of the public sphere. Positive law prohibited

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<sup>15</sup> Lucia, *Framing Female Lawyers*.

that female civil servants could become *Jefe de Administración* or enter the diplomatic service (*Orden del Ministerio de Trabajo*, 27 September 1939); women could not work as a notary (*Orden del Ministerio de Trabajo*, 2 June 1944), they could not enter the *Secretariado de la Administración de Justicia*, be a public prosecutor or join the police (*Orden del Ministerio de Trabajo*, 1953). Other measures that made it more difficult to join the work force were the removal of the *plus familiar* in case of two incomes (*Orden del Ministerio de Trabajo*, 29 March 1946) and the *Ley de Contrato de Trabajo* (26 January 1944) which stipulated that women needed their husbands' permission to work and, more importantly, that husbands could keep their wives' salary if they wished to do so. Ruiz Franco, following Jiménez, describes this politics of feminization as follows:

Se estableció un ordenamiento jurídico que veía a las mujeres más que como sujetos con unos derechos inherentes a su condición de seres humanos, como seres obligados a una función social específica basada en su capacidad reproductora y educacional. El rol jurídico asignado se encontraba sujeto a un paternalismo que el estado encomendaba, en función del estado civil, al padre o al marido, garantizando con ello el control social de las mujeres e invalidando cualquier conato de independencia social y económica de las mismas al marginarlas profesionalmente. Con todo ello se lograba el fin último que se perseguía, lo que se ha denominado una *política de feminización*.<sup>16</sup>

Against that backdrop any kind of legal change in favour of women must have been perceived as threatening the status quo. It is generally accepted that the public debate about women's rights began at the *Primer Congreso Femenino Hispanoamericano Filipino*,

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<sup>16</sup> Rosario Ruiz Franco, *¿Eternas menores? Las mujeres en el franquismo* (Madrid: Biblioteca Nueva, 2007), 27-28. See also Encarnación Jiménez Losantos, 'Ideología feminizadora en el franquismo, orígenes y evolución', *Estudis D'Historia Contemporània del País Valencià*, 9 (1982), 77-100.

which was held in Madrid in May 1951 under the auspices of the *Sección Femenina*. Shortly thereafter, in 1952, the first *Congreso Nacional de Justicia y Derecho* was celebrated and, surprisingly, women's issues were part of the discussions.<sup>17</sup> Ruiz Franco states that:

Paralelamente a esos cambios [sociopolíticos y económicos] y favorecidos por los mismos, comenzaron a escucharse voces, en un principio aisladas, a favor de una reforma de la legislación vigente referida a las mujeres. Eran voces de hombres y mujeres que si bien se encontraban dentro de las coordenadas ideológicas del franquismo contribuyeron positivamente a la realización de las reformas posteriores.<sup>18</sup>

One of these 'voces aisladas' was the lawyer and novelist Mercedes Formica who was so outspokenly reformist that she became *persona non grata* with the *Sección Femenina*.<sup>19</sup> On 7 November 1953 she published a notorious article in *ABC* entitled 'El domicilio conyugal' in which she denounced the terrible situation women were subjected to during the separation process. Before 1958 independent of questions of culpability, once separation proceedings had begun it was up to the judge to decide on the wife's temporary home and usually one of the husband's relatives was chosen. Hence women were hugely disadvantaged in the separation process and even after the verdict the aftermaths for the whole family could be considerable. Formica's quest to bring the injustices to public attention was so renowned that the 1958 legal reform was referred to as *la re-formica* in

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<sup>17</sup> Two female jurists from the *Colegio de Abogados de Madrid* as well as members of the *Sección Femenina* took part precisely to introduce discussion of women's issues.??????

<sup>18</sup> Rosario Ruiz Franco, *¿Eternas menores?*, 49.

<sup>19</sup> Mercedes Formica, *Espejo roto. Y espejuelos*. (Madrid: Huerga y Fierro, 1998), 12.



jurists' circles.<sup>20</sup> Ruiz Franco identifies a memorandum which was sent from the Ministry of Justice to the President of the *Comisión General de Codificación* (1954) in which the impact of gender inequality on public opinion was recognised and certain concern expressed,<sup>21</sup> while Federico Castro y Bravo, in his official commentary on the legal reform of 1958, explicitly states that:

La reforma de 1958 tuvo, como uno de sus principales motores, el propósito de atender a las protestas suscitadas por la injustificada discriminación hecha por el Código entre hombre y mujer, especialmente entre los cónyuges. El legislador, ante las encontradas exigencias de feministas y defensores de la concepción patriarcal, ha preferido seguir un criterio conservador, que caracteriza diciendo: 'Si bien es cierto que el sexo por sí no debe dar lugar a diferencias y menos a desigualdades de trato jurídico civil, ha parecido igualmente claro, hasta el punto de estimarlo también como principio fundamental, que la familia, por ser la más íntima y esencial de las comunidades, no puede originar desigualdades, pero sí ciertas diferencias orgánicas derivadas de los cometidos que en ella incumben a sus componentes, para el mejor logro de los fines morales y sociales que, conforme al Derecho natural, está llamada a cumplir. Se contempla, por tanto, la posición peculiar de la mujer casada en la sociedad conyugal, en la que por exigencias de la unidad matrimonial existe una potestad de dirección que la naturaleza, la

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<sup>20</sup> See Ruiz Franco, *¿Eternas menores?*, 130, where she cites the jurist Luis Díez Picazo. In her memoirs Formica also describes how a figure referring to her was burnt in the *Fallas de Valencia* in 1954, another indication of Formica's impact on public opinion: 'de pie sobre un libro gigantesco titulado "Formicalogía", una mujer hacía pasar por el aro a una serie de abogados revestidos con togas. Figuras femeninas y masculinas clamaban por sus derechos, rodeados de hormigas, símbolo de mi apellido.' (*Espejo roto*, 49) She also explains that: 'Durante los años que ejercí la profesión, lo hice como un Quijote femenino, una especie de Cantinflas con faldas. Y no me arrepiento.' (*Espejo roto*, 34).

<sup>21</sup> Ruiz Franco also observes that: 'el Ministro de Justicia envió un escrito al Presidente de la CGC en el que reconocía el impacto que la desigualdad jurídica entre hombres y mujeres estaba teniendo entre la opinión pública, *sin hacer referencia alguna al artículo "El domicilio conyugal" ni a Mercedes Formica.*' (*¿Eternas menores?*, 117, my emphasis). For a detailed analysis of the national and international newspaper coverage of Mercedes Formica's campaign, see also 81-100.

Religión y la Historia atribuyen al marido, dentro de un régimen en el que ha inspirado siempre y debe inspirar en lo sucesivo las relaciones entre los cónyuges.<sup>22</sup>

Predictably, the allegedly natural law of gender difference and the ‘diferencias orgánicas’ are used as a justification to legitimize male dominance in marriage. The point I am interested in here, however, is not that the Francoist regime favoured men. What concerns me is to demonstrate that there seems to have been a sufficiently large public debate for the lawmaker to recognise gender inequality as a potential problem. According to Sánchez López and others there was an unusually large amount of publicity about the legal changes.<sup>23</sup> More importantly, it explains where male anxieties (that are patently obvious in the film) might come from.

The legal changes of 1958 are more wide-ranging than is acknowledged by some historians. Single women were allowed to be witnesses in wills; women undergoing separation proceedings did not have to be ‘deposited’ in somebody else’s home; separated women were entitled to half the *bienes gananciales* (conjugal property) and all of their own property; there was no longer a distinction between female and male adultery (*amancebamiento* and *adulterio*), so there was less scope for gendered injustice on this particular issue; a woman who married a second time could keep the *patria potestad* for her

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<sup>22</sup> Federico de Castro y Bravo, *Compendio de derecho civil (apéndice): la reforma del Código Civil (ley de 24 de abril de 1958)*, (Madrid: Instituto de Estudios Políticos, 1958), 52.

<sup>23</sup> Rosario Sánchez López explains that: ‘La ley de 1961 fue extraordinariamente difundida por Sección Femenina a través de los folletos y obras publicados por el Instituto de la Juventud y de los poderosos medios de comunicación controlados por el Movimiento.’ (*Mujer española, una sombra de destino en lo universal. Trayectoria histórica de Sección Femenina de Falange (1934-1977)*) (Murcia: Universidad de Murcia, 1990), 44). See also Ruiz Franco who adds that the magazine *Teresa* published articles with headlines like ‘España en la vanguardia de la dignificación del trabajo de la mujer. Igualdad de derechos’, which praised the work of the *Sección Femenina* and highlighted the necessity of legal change while also reassuring the reader that it was, by no means, a feminist law (¿*Eternas menores?*, 140).

children from the previous marriage; article 1413 reduced the husband's power to manage the conjugal property: he now needed to get the wife's consent to sell part of it.<sup>24</sup>

The legal changes of 1961 were equally important and for our case study also indirectly relevant. The 1960s saw the beginning of a new era in terms of education and employment. Due to the rising numbers in secondary education more and more women entered the universities. Employment figures for women also rose throughout the 60s because of the changing economic climate and Franco's opening of Spain to international trade.<sup>25</sup> The failure of autarchy led to an implementation of alternative economic policies, the creation of a market economy and the liberalization of trade and foreign investment. The strong industrialization process promoted women's integration into the workforce. Women's new social role was recognized with the *Ley sobre Derechos Políticos, Profesionales y de Trabajo de la Mujer* (1961) that gave women, at least *de jure* equal political, professional and labour rights. It eliminated sex discrimination in terms of work, and declared equal pay for equal work. Yet, it also restricted the supposed liberty in two ways: certain professions were still excluded (*la Administración de Justicia (salvo Trabajo y Menores)*, *Cuerpos Armados*, *Marina Mercante*) and married women still needed the husband's permission to work.<sup>26</sup> Interestingly, Folguera reminds us of a little known fact:

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<sup>24</sup> María Telo Núñez, 'La evolución de los derechos de la mujer en España', in *La mujer española: de la tradición a la modernidad (1960-1980)*, ed. Concha Borreguero *et al* (Madrid: Tecnos, 1986), 81-94 (pp. 86-87).

<sup>25</sup> See Rosario Sánchez López, *La mujer española, una sombra de destino en lo universal: trayectoria histórica de Sección Femenina de Falange (1934-1977)* (Murcia: Universidad de Murcia, 1990).

<sup>26</sup> Pilar Primo de Rivera's introduction to the legal texts explains that: 'De particular importancia y uno de los ejes de las leyes es la posibilidad de acceso que concede a la mujer, sin límites de ninguna clase [...] a los distintos Cuerpos y carreras de funcionarios al servicio de todo género de administraciones públicas y privadas, así como el reconocimiento de su plena capacidad para la contratación de su trabajo. [...] En segundo lugar, la ley contempla, claro es que referido únicamente a la mujer casada, las limitaciones de Derecho, una vez más confirmado en la reforma del Código Civil en mil novecientos cincuenta y ocho, que el matrimonio exige una potestad de dirección que la naturaleza, la religión y la historia atribuyen al marido.'

article 5 of the above law limits the husband's authority to the extent that 'la oposición o negativa del marido no será eficaz cuando se declare judicialmente que ha sido hecha de mala fe o con abuso de derechos.'<sup>27</sup> This is yet another example of how the lawmaker gave themselves an air of liberalism in the wording of the legal texts and allowed for more liberties than women at the receiving end of marital authority might have been aware of, or indeed, able to act upon.

All these changes might strike us as insignificant from today's vantage point. Opinions vary as to their significance and how and why they came about.<sup>28</sup> Predictably those women who were directly involved in the legal changes of 1958 and 1961 were positive about the reforms. Formica comments in her memoirs:

Las jóvenes universitarias suelen comentar con cierta ironía, refiriéndose a la reforma del 58: ¡Ah sí! Aquella que nos permitió actuar de testigo en los testamentos. Minimizando lo que significó una *verdadera revolución* en el mundo del derecho, con el cambio de importantes

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(*Ley 56/1961*, 10). Primo de Rivera also cautiously adds in the same introduction that: 'No es, ni por asomo, una ley feminista –seríamos infieles a José Antonio si tal hiciéramos- es sólo una ley de justicia para las mujeres que trabajan [...]. Ni por naturaleza ni por fines a cumplir en la vida podrán igualarse, pero sí pedimos que en igualdad de funciones, tengan igualdad de derechos.' (*Ley 56/1961*: 31-32). Interestingly, five years later Primo de Rivera had moved on in her judgment of female contributions to the legal profession. In 1966 she wrote a letter to Antonio Iturmendi, *Presidente de las Cortes*, on the topic of female judges: 'No porque entendamos que es más justa que el hombre, de ninguna manera, sino porque dentro de la balanza de la Justicia, puede aportar matices y puntos de vista, precisamente por su contextura femenina, que ayuden a clarificar muchas situaciones.' (quoted in Ruiz Franco, *¿Eternas menores?*, 147).

<sup>27</sup> *Ley 56/1961*, article 5. See also Pilar Folguera, 'Ley de 22-7-1961. Derechos políticos, profesionales y de trabajo de la mujer, in *Mujeres y hombres: la formación del pensamiento igualitario*, ed. María Angeles Durán (Madrid: Castalia 1993), [178-193 \(p. page run of chapter???\)](#)–188).

<sup>28</sup> For a variety of opinions, see Pilar Ballarín Domingo, *La educación de las mujeres en la España contemporánea (siglos XIX-XX)* (Madrid: Síntesis, 2001); Lidia Falcón O'Neill, *Los derechos civiles de la mujer (Textos legales. Jurisprudencia. Comentarios)* (Barcelona: Nereo, 1963); Pilar Folguera, *Otras visiones de España* (Madrid: Ediciones Pablo Iglesias, 1993), Geraldine M. Scanlon, *La polémica feminista en la España contemporánea, 1868-1974* (Madrid: Akal, 1986); Rosario Sánchez López, *Mujer española*; María Telo Núñez, *Derechos que no tiene la mujer* (Madrid: Reus, 1973).

artículos del Código Civil, la Ley Procesal y a favor de la mujer. El mayor sufrido por estos cuerpos legales desde su promulgación en 1888. [...]

Lo que ahora ni se discute antes del 1958 se miraba como un sacrilegio. Recuerdo la indignación de un Juzgado cuando pedí en las medidas provisionales, que el esposo hiciese sus maletas. Usted se ha vuelto loca. ¿Cómo podemos tolerar que un hombre salga de “su casa”?<sup>29</sup>

While we are fortunate to have Formica’s candid memoirs as an example of a contemporaneous woman lawyer, it is obviously a subjective view. With historical hindsight Geraldine Scanlon evaluates the legal changes rather differently. She states that they were:

una fachada hipócrita de consistencia, el Estado ha dado una seudolibertad a la mujer que le permite explotar su potencial económico al mismo tiempo que le niega toda libertad real y preserva de este modo la base fundamental del Estado: la familia.<sup>30</sup>

While some point out the possible success of - what I would term - the ‘politics of small steps’ that women like Formica or Telo Núñez were relegated to, Scanlon focuses on the wider context and highlights the relative ineffectiveness of those legal changes. In fairness to Formica, legal systems in general, independent from time or space, are usually slow to adopt social change. Herculean efforts of lawyers like Formica or Telo Núñez should not be underestimated, since they brought real life improvements to women. It should also be noted in this context that Lidia Falcón’s evaluation of the reforms is appreciative of Formica’s efforts, a verdict that, owing to Falcón’s affiliation to the Communist Party, is

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<sup>29</sup> Mercedes Formica, *Espejo roto*, 167-170.

<sup>30</sup> Geraldine Scanlon, *Polémica feminista*, 344. María de la Paz Pando Ballesteros equally states that the legal changes were: ‘tan tímidas que parecían hechas con la única finalidad de que pasaran inadvertidas.’ (‘Relaciones de género, familia y trabajo en el mesofranquismo’, in *Revista Faces de Eva. Estudos sobre a mulher*, 5 (2001), 23-33 (p. 25)).

free from suspicion of being overly biased towards Formica.<sup>31</sup> While some emphasise that the legal changes were driven by economic considerations and a desire to impress the international community, Folguera also points out that it did have immediate advantages for women:

Respondía en parte a los intereses del franquismo que deseaba crear una base jurídica que le permitiera llevar a cabo los planes modernizadores y el despegue económico del país, pero sin duda sirvió también para que un número importante de mujeres se incorporaran paulatinamente a una serie de profesiones que hasta ese momento le estaban vedadas, lo que permitió a su vez el acceso a una cierta independencia económica y personal.<sup>32</sup>

The central ideological project of keeping women in their place is particularly well-represented in our case study, although the title of the film seems to indicate the exact opposite. With its debate centred upon women's rights *Los derechos de la mujer* proclaims its politics in instantly recognizable terms. The film attempts to present a case study to its audience and almost adopts the structure of argumentation associated with the courtroom itself. Its jocular tone combined with substantive content invites its viewers to sit in judgment of the issues at hand. In *Los derechos de la mujer* the equality debate revolves around the private issue of marriage which is powerfully increased by choosing a female lawyer as the lead and voice for women's rights. Throughout the history of rights it was a common legal strategy to distinguish between *discriminación por razón de matrimonio* and *discriminación por razón de sexo*. This legalistic sleight of hand allowed the lawmaker to claim that women were given more rights whenever they needed to portray themselves with

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<sup>31</sup> Lidia Falcón, *Los derechos civiles de la mujer*, 358.

<sup>32</sup> Pilar Folguera, *Otras visiones de España*, 190-191.

an air of liberalism. More often than not rights were restricted again as soon as women got married. *Los derechos de la mujer*, then, is depicting that precise moment in a woman's life: the step from single to married woman and the restriction of rights that it entailed. Curiously, male entitlement remains unspoken: Juan never makes use of his rights to forbid his wife to practice law; nor does it cross María José's mind that her change in marital status might have an impact on her professional life. The legal and social reality of 1960s Spain is not reflected in the film. Quite the contrary: María José's performance moves from confident bride to confident lawyer, from wedding dress to smart suit, bossing around both her husband and *pasante*. The patriarchal anxieties about female self-confidence and hence women out of male control make the plot increasingly implausible and far removed from the legal reality of the time. However, the film is also intriguingly complex in that the viewer witnesses the successful lawyer at the very time when she is represented as professionally inadequate and personally unfulfilled drawing attention to the fact that women must choose between the private and public sphere.

The courtroom is often read as a metaphor for life where interpersonal dramas are played out and where we judge one another. The courtroom scenes in our particular case study are peripheral to the plot: in fact the viewer is never told the outcome of the murder case. Their function is to add legal flavour to the film and, more importantly, to show how much María José Fuentes struggles as a defence lawyer in this particular case. The court, however, is not confined to the courthouse, but brought into the private quarters of the newly-wed couple. The private space in *Los derechos de la mujer* is the court of two separate, but simultaneously enacted trials: María José's preparation of the defence of her

client as well as the imaginary lawsuit of the marital battle. This reaches farcical proportions when, during the wedding night, María José feverishly prepares the court case for the following day instead of fulfilling her conjugal duty. She is sitting in bed reading *El Código Penal*, while her husband is reading *Marie Claire*. According to Lucia, the representation of female lawyers working in bed is an almost obligatory scene and she queries: ‘Why, we must ask, do men not work in bed? Has the female lawyer, as a result of her career and ambitions, been forced to exchange a bed with a lover for a bed full of books, folders and papers?’<sup>33</sup> To add insult to injury María José’s *pasante* (the inimitable José Luis López Vázquez) enters, sits down on her side of the bed and discusses the next day’s case. No action for the husband who is still reading *Marie Claire*. The role reversal is taken to such an extreme by Juan that there is confusion as to who should take the initiative in terms of consumption of marriage. Juan wants María José to make the first move, because she has assumed the masculine role of a career woman. Another marital fight breaks out as a result of which she threatens to leave him:

María José: Me marcho, me marcho para siempre.

Juan: Abandono del domicilio conyugal. Te va a traer la policía a rastras.

María José: Nuestro matrimonio no está consumado.

Juan: A pesar de eso...

María José: Me voy...

Juan: Quieto abogado. Tú sabes que no te asisten ningunas de tus leyes si cruzas la puerta de la calle.

María José: Tengo toda la razón.

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<sup>33</sup> Lucia, *Framing Female Lawyers*, 117.



Juan: ¿Y de qué te vale tener razón? [...]

María José: (looking at the *Código Civil*) Aquí lo tenemos. Y te aseguro que lo que no es justo no prospera.

Juan: Hay cosas que no son justas, pero son legales. Estás atrapada por los cuatro costados. Desde los tiempos más remotos el hombre y la mujer sellaron un pacto. Ella en el hogar y él a luchar por ella, pero tú te has saltado el pacto a la torera. [...]

María José: La mujer que tú concibes es una esclava. Hace mucho tiempo que se terminó la esclavitud. [...] Quiero los mismos derechos, el 50%.

This is one of many marital fights in which law is called in as a means of dispute resolution. The fights increase in both frequency and venom and yet the film predictably concludes with a conservative ending and the return to the status quo. Juan wins through almost theological tropes of reconciliation and redemption. María José's dilemma is rapidly turned into a decision the very moment Juan actually leaves her. The choice boils down to marriage versus career and unsurprisingly Juan wins. Nothing in the plot foreshadows that a lawyer who acts in such a self-determined way would admit defeat so easily. After a car chase in which María José desperately tries to get her angered husband back, Juan demands she give up her job if she wants him to return home. She surrenders unconditionally and, in a situation laden with symbolism, asks him to help her deal with a police officer who caught her speeding. The self-determined successful lawyer suddenly becomes *la eterna menor* and needs her husband to talk to the authorities. Juan obliges and, making tactical use of the 'helpless woman' image in order to excuse her actions, describes her as somebody who only sticks to *el Código de Christian Dior* to which the police officer replies: 'Cristianos lo somos todos, pero la carretera es la carretera', bringing the religious

discourse in again and going full circle with the biblical prologue of the film. After clarifying gender roles one last time husband and wife happily drive off into the darkness of the night:

Juan: ¿Conduzco yo?

María José: Claro, en eso hemos quedado, ¿no? El volante en tus manos.

Juan: Para ser tu chófer y llevarte siempre donde tú quieras.

María José: Pues a casa, Juan.

Juan: A la orden, señora.

The film ends with this hint of equality, Juan promising to obey his wife as long as she lets him do the driving. Cynthia Lucia argues that in many female lawyer films women never quite make it, and that they activate their own mechanisms of containment.<sup>34</sup> María José Fuentes is an excellent example of a career woman who, at the end of the day, does not insist on women's rights, but happily surrenders to patriarchal authority. She ultimately fails in her feminist quest to continue her career and settles for being a housewife and mother and goes from successful lawyer to obedient wife with startling haste. The conservative ending is particularly bad news for the female viewer since it shows that if not even lawyers insist on their own rights, then how much of a chance is there for less educated women and for those less skilled in the art of rhetorical battle? If *Los derechos de la mujer* is a film about a female lawyer on trial, then María José Fuentes is not making a strong case for herself and by extension for women's rights. The film challenges, yet ultimately restores, patriarchal power, through the action of the female lawyer; in that sense both law and the female lawyer are instruments of a male-dominated world. The question

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<sup>34</sup> Lucia, *Framing Female Lawyers*, 17.

of whether the self-confident performance stays in our minds and hence has ‘role-model potential’ ultimately lies with each individual viewer and is likely to remain unresolved.